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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/857,763	10/09/2001	Horst Pihlhoffer	10537/119	9751
26646	7590	10/06/2003	EXAMINER	
KENYON & KENYON ONE BROADWAY NEW YORK, NY 10004			MEEKS, TIMOTHY HOWARD	
			ART UNIT	PAPER NUMBER
			1762	

DATE MAILED: 10/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/857,763

Applicant(s)

PILLHOFFER ET AL.

Examiner

Timothy H. Meeks

Art Unit

1762

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 September 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

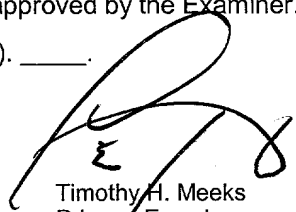
Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 8-14.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


Timothy H. Meeks
Primary Examiner
Art Unit: 1762

Continuation of 5. does NOT place the application in condition for allowance because: Applicants argue that the examiner's contention that one of ordinary skill in the art would read the disclosure of Strasser at col 3, lines 61-67 to mean a mixture of 80 parts filler, 40 parts donator, and 40 parts activator based upon the design of the activator and donator to react one to one to produce the metal halide is unsupported. Although the examiner believes that this assertion has merit, no written support can be made thereof in a timely fashion, therefore, the examiner withdraws this contention. Regardless, applicants admit at page 3, last full paragraph of the request for consideration that the disclosure is ambiguous and therefore, the reference would suggest either interpretation of the claim. Furthermore the examiner maintains the position set forth at page 4 of the final office action that even interpreting the disclosure to mean that the mixture contain 80 parts filler and 40 parts combined of the donator and activator, this suggests a range of amounts of donator which overlap the claimed range. Applicants argue that Strasser does not disclose a range of weight percentage of one component independent of the other components in the mixture because the paramter described in Strasser is different from that described in claim 8. The limitation of claim 8 is "wherein a metal donor powder content is 10% to 25% by weight of the powder mixture". That is, the weight of the metal donor powder in the mixture is 10 to 25 percent of the total weight of all components in the mixture including the metal donor. Strasser discloses a powder mixture having 80 parts by weight alumina filler powder and 40 parts by weight donator and activator powder material which as established above can either mean 40 parts total of activator and donor or 40 parts donor and 40 parts activator. The latter interpretation anticipates the claimed range for reasons established in the first and final office actions. The former interpretation would suggest a range of metal donor contents which at least overlap with the claimed range in that at least some part of the 40 parts donor and activator is clearly attributed to the donor. This results in amounts of the donor being between 0 and 40 parts by weight. This translates to a range of weight percentages from less than about 1 percent by weight of the mixture (assuming between 0 and 1 parts of the donor) to about 33 weight percent of the mixture (assuming just less than 40 parts donor). Choosing amounts in the claimed range thus would have been obvious for the reasons established at page 4 of the final office action. Applicants argue that the claimed weight percentages of donor and the particle size of the donor achieve unexpected results and cite a patent mentioned in the specification where problems occurred using particle sizes of 10 to 20 microns and another where problems were discovered using a particle size of 40 microns. The examiner maintains the position set forth at page 5 of the final office action. No conclusive evidence conclusively showing the purported unexpected results has been provided.